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LOK SABHA

The following Bill was introduced in Lok Sabha on the 18th April,
1964:—

BILL No. 31 OF 1964

A Bill further to amend the Advocates Act, 1961.

BE it enacted by Parliament in the Fifteenth Year of the Short title.
Republic of India as follows:—

1. This Act may be called the Advocates (Amendment) Act, Amend-
1964. ment of
section 3.

25 of 1961. 5 2. In section 3 of the Advocates Act, 1961 (hereinafter referred
to as the principal Act),—

(a) in sub-section (2), in clause (b), for the words "roll of
the State Bar Council", the words "electoral roll of the State
Bar Council" shall be substituted;

10 (b) to sub-section (2), the following proviso shall be
added, namely:—

"Provided that as nearly as possible one-half of such
elected members shall, subject to any rules that may be
made in this behalf by the Bar Council of India, be persons
who have for at least ten years been advocates on a State
roll, and in computing the said period of ten years in rela-
tion to any such person, there shall be included any period
during which the person has been an advocate enrolled
under the Indian Bar Councils Act, 1926.";

38 of 1926. 20 (c) after sub-section (3), the following sub-sections shall
be inserted, namely:—

"(4) An advocate shall be disqualified from voting at
an election under sub-section (2) or for being chosen as,

and for being, a member of a State Bar Council, unless he possesses such qualifications or satisfies such conditions as may be prescribed in this behalf by the Bar Council of India, and subject to any such rules that may be made, an electoral roll shall be prepared and revised from time to time by each State Bar Council. 5

(5) Nothing in the proviso to sub-section (2) shall affect the term of office of any member elected before the commencement of the Advocates (Amendment) Act, 1964, but every election after such commencement shall be held in accordance with the provisions of the rules made by the Bar Council of India to give effect to the said proviso.” 10

Amendment of section 4.

3. In section 4 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The term of office of a member of the Bar Council of India elected by the State Bar Council shall,— 15

(i) in the case of a member of a State Bar Council who holds office *ex officio*, be two years from the date of his election; and

(ii) in any other case, be for the period for which he holds office as a member of the State Bar Council: 20

Provided that every such member shall continue to hold office as a member of the Bar Council of India until his successor is elected.”.

Amendment of section 8.

4. In section 8 of the principal Act,— 25

(a) for the words “Bar Council”, the words “State Bar Council” shall be substituted;

(b) for the words “elected to each such Council”, the words, brackets and figures “elected to each such Council (reconstituted on the expiry of the term of office of the elected members of the State Bar Council under section 54)” shall be substituted. 30

Substitution of new section for section 9.
Disciplinary Committees.

5. For section 9 of the principal Act, the following section shall be substituted, namely:—

“9. (1) A Bar Council shall constitute one or more disciplinary committees, each of which shall consist of three persons of whom two shall be persons elected by the Council from amongst its members and the other shall be a person co-opted by the Council from amongst advocates who possess the quali- 35

cations specified in the proviso to sub-section (2) of section 3 and who are not members of the Council, and the senior-most advocate amongst the members of a disciplinary committee shall be the Chairman thereof.

5 (2) Notwithstanding anything contained in sub-section (1), any disciplinary committee constituted prior to the commencement of the Advocates (Amendment) Act, 1964 may dispose of the proceedings pending before it as if this section had not been amended by the said Act.”.

10 6. After section 10 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 10A.

15 “10A. An elected member of a Bar Council shall be deemed to have vacated his office if he is declared by the Bar Council of which he is a member to have been absent without sufficient excuse from three consecutive meetings of such Council, or if his name is, for any cause, removed from the roll of advocates or if he is otherwise disqualified under any rule made by the Bar Council of India.”.

Disqualification of members of Bar Council.

7. In section 15 of the principal Act, in sub-section (2),—

Amendment of section 15.

20 (a) for clause (a), the following clause shall be substituted, namely:—

25 “(a) the election of members of the Bar Council including the conditions subject to which persons can exercise the right to vote, the preparation and revision of electoral rolls, the manner in which election shall be held and the manner in which results of election shall be published;”;

(b) in clause (e), for the words “Bar Council”, the words “State Bar Council” shall be substituted.

30 8. In section 16 of the principal Act, to sub-section (4), the following proviso shall be added, namely:—

Amendment of section 16.

35 “Provided that where any such senior advocate makes an application before the 31st December, 1965 to the Bar Council maintaining the roll in which his name has been entered that he does not desire to continue as a senior advocate, the Bar Council may grant the application and the roll shall be altered accordingly.”.

40 9. In section 17 of the principal Act, in sub-section (3), for the words “and such seniority shall be determined”, the words “and, subject to any rule that may be made by the Bar Council of India in this behalf, such seniority shall be determined” shall be substituted.

Amendment of section 17.

Amend-
ment of
section 18.

10. In section 18 of the principal Act, to sub-section (1), the following proviso shall be added, namely:—

“Provided that where any such application for transfer is made by a person against whom any disciplinary proceeding is pending or where for any other reason it appears to the Bar Council of India that the application for transfer has not been made *bona fide* and that the transfer should not be made, the Bar Council of India may, after giving the person making the application an opportunity of making a representation in this behalf, reject the application.”. 10

Amend-
ment of
section 20.

11. In section 20 of the principal Act, in sub-section (3), for the words “Entries in each part of the common roll shall be in the order of seniority and such seniority shall be determined as follows”, the words “Entries in each part of the common roll shall be made in such manner as the Bar Council of India thinks fit and the seniority of an advocate on the common roll shall be determined as follows” shall be substituted. 15

Substitu-
tion of new
section for
section 22.

12. For section 22 of the principal Act, the following section shall be substituted, namely:—

Certificate
of enrol-
ment.

“22. There shall be issued a certificate of enrolment, in the 20 prescribed form—

(i) by the State Bar Council to every person whose name is entered in the roll of advocates maintained by it under this Act; and

(ii) by the Bar Council of India to every person whose name is entered in the common roll without his name having already been entered in any State roll.”. 25

Amend-
ment of
section 24.

13. In section 24 of the principal Act,—

(A) in sub-section (1),—

(a) in clause (c),— 30

(i) in sub-clause (iii), the words “or elsewhere” shall be omitted;

(ii) after sub-clause (iii), the following sub-clause shall be inserted, namely:—

“(iv) in any other case, from any University 35

outside the territory of India, if the degree is recognised for the purposes of this Act by the Bar Council of India; or”;

(b) in clause (d),—

(i) the words “after such training” shall be omitted;

(ii) in the proviso, for paragraph (i), the following paragraph shall be substituted, namely:—

“(i) a person who has obtained a degree in law from any University in India on the results of an examination held before the 31st day of March, 1964 or such other later date as may be prescribed, or a barrister who was called to the Bar before such date, or a barrister who, having qualified after that date, has received such practical training in law as may be recognised in this behalf by the Bar Council of India;”;

(B) in sub-section (2), for the words “a vakil, pleader or an attorney who is a law graduate, or who is not a law graduate but was entitled to be enrolled as an advocate of a High Court immediately before the appointed day under any law then in force,”, the words “a vakil or a pleader who is a law graduate” shall be substituted;

(C) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(3) Notwithstanding anything contained in sub-section (1), a person who—

(a) before the 31st day of March, 1964, has, for at least three years, been a vakil or a pleader or a mukhtar, or was entitled at any time to be enrolled under any law then in force as an advocate of a High Court (including a High Court of a former Part B State) or of a Court of Judicial Commissioner in any Union territory; or

(b) before the 15th day of August, 1947, has been an advocate of any High Court in any area which was comprised within India as defined in the Government of India Act, 1935; or

(c) before the 1st day of April, 1937, has been an advocate of any High Court in any area which was comprised within Burma as defined in the Government of India Act, 1935; or

(d) is entitled to be enrolled as an advocate under any rule made by the Bar Council of India in this behalf,

may be admitted as an advocate on a State roll if he—

(i) makes an application for such enrolment in accordance with the provisions of this Act; and 5

(ii) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1).

(4) Notwithstanding anything contained in sub-section (1), a person who has been an attorney of any High Court may be admitted as an advocate on a State roll if he makes an application for such enrolment in accordance with the provisions of this Act and fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1), but the right of such a person to plead or to act on the original side of the High Court at Calcutta or the High Court at Bombay shall be subject to any rules that may be made in that behalf by that High Court.” 15

Amend-
ment of
section 26.

14. In section 26 of the principal Act,—

(a) in sub-section (1), after the words, brackets and figures “sub-sections (2) and (3)”, the words “and to any direction that may be given in writing by the State Bar Council in this behalf” shall be inserted; 20

(b) to sub-section (1), the following proviso shall be added, namely:— 25

“Provided that the Bar Council of India may, if satisfied, either on a reference made to it in this behalf or otherwise, that any person has got his name entered on the roll of advocates by misrepresentation as to an essential fact or by fraud or undue influence, remove the name of such person from the roll of advocates after giving him an opportunity of being heard.”; 30

(c) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Where the enrolment committee of a State Bar Council has refused any application for admission as an advocate on its roll, the State Bar Council shall, as soon as may be, send intimation to all other State Bar Councils about such refusal stating the name, address and qualifications of the person whose application was refused and the grounds for the refusal.”. 35 40

15. After section 26 of the principal Act, the following section shall be inserted, namely:—
- Insertion of new section 26A.
- “26A. The Bar Council of India or any State Bar Council may remove from the common roll or the State roll, as the case may be, the name of any advocate who is dead or from whom a request has been received to that effect.”
- Power to remove names from roll.
16. In section 28 of the principal Act, in clause (b) of sub-section (2), the words “after such training” shall be omitted.
- Amendment of section 28.
17. To section 35 of the principal Act, the following *Explanation* shall be added, namely:—
- Amendment of section 35.
- “*Explanation.*—In this section, the expressions “Advocate-General” and “Advocate-General of the State” shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India.”
18. In section 37 of the principal Act, in sub-section (1), for the words, brackets and figures “under sub-section (3) of section 35”, the words and figures “under section 35” shall be substituted.
- Amendment of section 37.
19. After section 48 of the principal Act, the following sections shall be inserted, namely:—
- Insertion of new sections 48A and 48B.
- “48A. (1) The Bar Council of India may, at any time, call for the record of any proceeding under this Act which has been disposed of by a State Bar Council or a Committee thereof, and from which no appeal lies, for the purpose of satisfying itself as to the legality or propriety of such disposal and may pass such orders in relation thereto as it may think fit.
- Power of revision.
- (2) No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.
- 48B. (1) For the proper and efficient discharge of the functions of a State Bar Council or any Committee thereof, the Bar Council of India may, in the exercise of its powers of general supervision and control, give such directions to the State Bar Council or any Committee thereof as may appear to it to be necessary, and the State Bar Council or the Committee shall comply with such directions.
- Power to give directions.
- (2) Where a State Bar Council is unable to perform its functions for any reason whatsoever, the Bar Council of India

may, without prejudice to the generality of the foregoing power, give such directions to the *ex officio* member thereof as may appear to it to be necessary, and such directions shall have effect, notwithstanding anything contained in the rules made by the State Bar Council.”

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Amend-
ment of
section 49.

20. In section 49 of the principal Act,—

(a) for clause (a), the following clauses shall be substituted, namely:—

“(a) the conditions subject to which an advocate may be entitled to vote at an election to the State Bar Council 10 including the qualifications or disqualifications of voters, and the manner in which an electoral roll of voters may be prepared and revised by a State Bar Council;

(ab) qualifications for membership of a Bar Council and the disqualifications for such membership; 15

(ac) the time within which and the manner in which effect may be given to the proviso to sub-section (2) of section 3;

(ad) the manner in which the name of any advocate may be prevented from being entered in more than one 20 State roll;

(ae) the manner in which the seniority among advocates may be determined;

(af) the category of persons who may be exempted from undergoing a course of training and passing an exami- 25 nation prescribed under clause (d) of sub-section (1) of section 24;

(ag) the class or category of persons entitled to be enrolled as advocates;

(ah) the conditions subject to which an advocate shall 30 have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a court;”;

(b) for clause (i), the following clauses shall be substituted, namely:—

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“(i) general principles for guidance of State Bar Councils and the manner in which directions issued or orders made by the Bar Council of India may be enforced;

(j) any other matter which may be prescribed.”

21. After section 49 of the principal Act, the following section shall be inserted, namely:—

Insertion
of new sec-
tion 49A.

“49A. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act including rules with respect to any matter for which the Bar Council of India or a State Bar Council has power to make rules.

Power of
Central
Govern-
ment to
make
rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) qualifications for membership of a Bar Council and disqualifications for such membership;

(b) the manner in which the Bar Council of India may exercise supervision and control over State Bar Councils and the manner in which the directions issued or orders made by the Bar Council of India may be enforced;

(c) the class or category of persons entitled to be enrolled as advocates under this Act;

(d) the category of persons who may be exempted from undergoing a course of training and passing an examination prescribed under clause (d) of sub-section (1) of section 24;

(e) the manner in which seniority among advocates may be determined;

(f) the procedure to be followed by a disciplinary committee of a Bar Council in hearing cases and the procedure to be followed by a disciplinary committee of the Bar Council of India in hearing appeals;

(g) any other matter which may be prescribed.

(3) Rules under this section may be made either for the whole of India or for all or any of the Bar Councils.

(4) If any provision of a rule made by a Bar Council is repugnant to any provision of a rule made by the Central Government under this section, then, the rule under this section, whether made before or after the rule made by the Bar Council, shall prevail and the rule made by the Bar Council shall, to the extent of the repugnancy, be void.

(5) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if

before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

Amend-
ment of
section 54.

22. In section 54 of the principal Act,—

(i) the words "the Bar Council of India and" shall be omitted and shall be deemed always to have been omitted;

(ii) the following proviso shall be inserted and shall be deemed always to have been inserted, namely:—

"Provided that such members shall continue to hold office until the State Bar Council is reconstituted in accordance with the provisions of this Act."

Amend-
ment of
section 55.

23. In section 55 of the principal Act, for clause (c), the following clauses shall be substituted, namely:—

"(c) every mukhtar practising as such immediately before the said date by virtue of the provisions of the Legal Practitioners Act, 1879, or any other law, who does not elect to be, or is not qualified to be, enrolled as an advocate under this Act; 18 of 1879

(d) every revenue agent practising as such immediately before the said date by virtue of the provisions of the Legal Practitioners Act, 1879, or any other law;" 18 of 1879.

Amend-
ment of
section 58.

24. In section 58 of the principal Act, in sub-section (4), for the words "the issue and renewal", the words "the renewal or the issue by way of renewal" shall be substituted.

Insertion
of new
sections
58A
and 58B.

25. After section 58 of the principal Act, the following sections shall be inserted, namely:—

Special
provisions
with res-
pect to
certain
advocates.

"58A. (1) Notwithstanding anything contained in this Act, all advocates who, immediately before the 26th day of July, 1948, were entitled to practise in the High Court in Allahabad or the Chief Court in Oudh and who under the provisions of the United Provinces High Courts (Amalgamation) Order, 1948 were recognised as advocates entitled to practise in the new High Court of Judicature at Allahabad but whose names were not formally entered on the roll of advocates of that High Court merely 30

by reason of the non-payment of the fee payable to the Bar Council of the said High Court, and all advocates who were enrolled as such between the said date and the 26th day of May, 1952, shall, for the purposes of clause (a) of sub-section (1) of section 17, be deemed to be persons who were entered as advocates on the roll of the said High Court under the Indian Bar Councils Act, 1926 and every such person may, on an application being made in this behalf, be admitted as an advocate on the State roll of Uttar Pradesh.

(2) Notwithstanding anything contained in this Act, all advocates who, immediately before the 10th day of October, 1952 were entitled to practise in the High Court of Hyderabad but whose names were not formally entered on the roll of advocates of that High Court merely by reason of the non-payment of the fee payable to the Bar Council of the said High Court shall, for the purposes of clause (a) of sub-section (1) of section 17, be deemed to be persons who were entered as advocates on the roll of the said High Court under the Indian Bar Councils Act, 1926 and every such person may, on an application being made in this behalf, be admitted as an advocate on the State roll of Andhra Pradesh or of Maharashtra.

(3) Notwithstanding anything contained in this Act, all advocate, who, immediately before the 1st day of May, 1960 were entitled to practise in the High Court of Bombay and who applied to get their names entered on the roll of advocates of the High Court of Gujarat under the provisions of section 8 of the Indian Bar Councils Act, 1926 but whose names were not so entered by reason of the repeal of the said provision shall, for the purposes of clause (a) of sub-section (1) of section 17, be deemed to be persons who were entered as advocates on the roll of the High Court of Gujarat under the said Act and every such person may, on an application being made in this behalf, be admitted as an advocate on the State roll of Gujarat.

(4) Notwithstanding anything contained in this Act, all persons who, immediately before the 1st day of December, 1961, were advocates on the roll of the Court of Judicial Commissioner in any Union territory under any law in force in that territory shall, for the purposes of clause (a) of sub-section (1) of section 17, be deemed to be persons who were entered as advocates on the roll of a High Court under the Indian Bar Councils Act, 1926 and every such person may, on an application made in this behalf, be admitted as an advocate on the State roll maintained in respect of that Union territory.

Special
provision
relating
to certain
discipli-
nary pro-
ceedings

58B. (1) As from the 1st day of September, 1963, every proceeding in respect of any disciplinary matter in relation to an existing advocate of a High Court shall, save as provided in the first proviso to sub-section (2), be disposed of by the State Bar Council in relation to that High Court, as if the existing 5 advocate had been enrolled as an advocate on its roll.

(2) If immediately before the said date, there is any proceeding in respect of any disciplinary matter in relation to an existing advocate pending before any High Court under the Indian Bar Councils Act, 1926, such proceeding shall stand trans- 10 38 of 1926.
ferred to the State Bar Council in relation to that High Court, as if it were a proceeding pending before the corresponding Bar Council under clause (c) of sub-section (1) of section 56:

Provided that where in respect of any such proceeding the High Court has received the finding of a Tribunal constituted 15
under section 11 of the Indian Bar Councils Act, 1926, the High 38 of 1926.
Court shall dispose of the case and it shall be lawful for the High Court to exercise for the purpose all powers conferred on it under section 12 of the said Act as if that section had not been repealed: 20

Provided further that where the High Court has referred back any case for further inquiry under sub-section (4) of section 12 of the said Act, the proceeding shall stand transferred to the State Bar Council in relation to the High Court as if it were a proceeding pending before the corresponding Bar Council 25
under clause (c) of sub-section (1) of section 56.

(3) If immediately before the said date there is any proceeding in respect of any disciplinary matter pending in relation to any pleader, vakil, mukhtar or attorney, who has been enrolled as an advocate on any State roll under the Act, such pro- 30
ceeding shall stand transferred to the State Bar Council on the roll of which he has been enrolled and be dealt with under this Act as if it were a proceeding arising against him thereunder.

(4) In this section "existing advocate" means a person who was enrolled as an advocate on the roll of any High Court under 35
the Indian Bar Councils Act, 1926 and who, at the time when any 38 of 1926
proceeding in respect of any disciplinary matter is initiated against him, is not enrolled as an advocate on a State roll under this Act.

(5) The provisions of this section shall have effect, notwith- 40
standing anything contained in this Act."

STATEMENT OF OBJECTS AND REASONS

The working of the Advocates Act, enacted in May, 1961, has revealed certain practical difficulties and representations in this behalf have been received from various State Bar Councils and other associations. The Bar Council of India has also suggested certain amendments to the Act. Difficulties were being experienced mainly in regard to the functioning of the Bar Councils and the Committees thereof and also in regard to the enrolment as advocates of certain classes of persons who may not fall strictly within the scope of sections 17 and 24 of the Act. It is considered necessary that the Act should be suitably amended for removing such difficulties and for facilitating the implementation of its provisions.

2. The Act provides for the general supervision and control of the Bar Council of India over all State Bar Councils in order that they may, in the exercise of their powers, follow a uniform all-India policy. The powers given to the Bar Council of India in this behalf are, however, inadequate and it is considered necessary to enlarge its powers. It is therefore proposed to empower the Bar Council of India to issue appropriate directions to a State Bar Council or a Committee thereof, and also to exercise powers of revision in relation to any proceeding disposed of by a State Bar Council. It is also proposed to enlarge the appellate jurisdiction of the Bar Council of India. It is further proposed to give wider rule making powers to the Bar Council of India. For the efficient and smooth working of the Act, it is also considered necessary to vest in the Central Government powers to make rules in respect of matters which may be considered necessary.

3. The State Bar Councils have been given wide powers under the Act in respect of various matters, including disciplinary matters. It is considered that, in the interests of efficient functioning of a State Bar Council, it should consist of some advocates who have at least ten years' standing. There was such a provision in the Indian Bar Councils Act, 1926. It is accordingly proposed to provide that, as nearly as possible one-half of the elected members of every State Bar Council should be advocates of not less than ten years' standing. The other principal amendments proposed in the Bill are—

(1) that the term of office of a member of the Bar Council of India elected by a State Bar Council should normally be for

the same period for which he holds office as a member of a State Bar Council;

(2) that the Bar Council of India should be empowered to form more than one disciplinary committee, and that the disciplinary committee of a Bar Council should consist of three members only, one of whom should be a co-opted member;

(3) that the Bar Council of India should be empowered to refuse, in suitable cases, the applications for the transfer of the name of an advocate from one State roll to another;

(4) that the Bar Council of India should be permitted to prepare and maintain the common roll in such manner as it thinks fit;

(5) that certain categories of persons who may not at present be entitled to be enrolled as advocates should be so entitled;

(6) that the State Bar Council should have more effective control over its enrolment committees; and

(7) that the disciplinary jurisdiction of State Bar Councils should be extended to certain proceedings which are not at present covered by the Act

4. The Bill seeks to achieve these objects. Opportunity has also been taken to make certain other amendments of a minor character.

5. The notes on clauses appended to the Bill explain the provisions thereof.

NEW DELHI;
The 11th March, 1964.

A. K. SEN.

Notes on clauses

Clause 2.—Under sub-section (2) of section 3 of the Act, the members of a State Bar Council are elected from amongst the advocates on its roll, and every advocate is entitled to seek election to the Bar Council. The State Bar Councils have been given wide powers under the Act in respect of various matters, including disciplinary matters. It is considered that, in the interests of efficient functioning of a State Bar Council, it should consist of some advocates who have at least ten years' standing. There was such a provision in the Indian Bar Councils Act, 1926. It is accordingly proposed to provide that, as nearly as possible, one-half of the elected members of every State Bar Council should be advocates of not less than ten years' standing.

It is also proposed to empower the Bar Council of India to make rules in regard to the disqualification of an advocate from voting at an election or for being chosen as, or for being, a member of a State Bar Council.

This clause seeks to amend section 3 for the purpose.

Clauses 3, 4 and 22.—These clauses seek to amend sections 4, 8 and 54 of the Act. Under section 8 of the Act, the term of office of elected members of the Bar Council of India and of State Bar Councils is six years, and one-third of the members has to retire on the expiration of every second year. The Bar Council of India consists mainly of elected representatives of State Bar Councils, and the principle of rotation which has been introduced, both in the Bar Council of India and the State Bar Councils, may enable a member of the Bar Council of India to continue in office even after he has ceased to be a member of the State Bar Council. This is an anomalous position. Clause 3 seeks to amend section 4 to provide that the term of office of a member of the Bar Council of India elected by a State Bar Council should be for the same period for which he holds office as a member of a State Bar Council. It further provides that where the Advocate-General of a State who is an *ex-officio* member of the State Bar Council, is elected to the Bar Council of India, he should hold office for two years only from the date of his election.

The existing section 8 provides for the term of office of members of the Bar Council of India as also of the State Bar Councils. In view of the amendment made by clause 3 relating to the term of office of the members of the Bar Council of India, clause 4 restricts the application of this section to State Bar Councils only.

Under section 54 of the Act, the term of office of elected members of a State Bar Council constituted for the first time is two years. Clause 4(b) seeks to make it clear that the provisions of section 8 shall apply to a State Bar Council when it is reconstituted on the expiry of the term of office specified in section 54.

In view of the amendment made to section 4, the provisions of section 54 have also been restricted to State Bar Councils only. The election to the various State Bar Councils would not be completed before the expiry of the term of their members under section 54. To overcome this difficulty, it has been provided in clause 22 that the elected members of a State Bar Council shall continue to hold office until it is reconstituted in accordance with the provisions of the Act.

Clause 5.—Under section 9, the disciplinary committee of a Bar Council is to consist of five members. It is felt that this makes the committee unwieldy. The strength of the committee is therefore proposed to be reduced to three. Out of three members, two shall be elected and the third member shall be co-opted. It is also proposed that the co-opted member should be an advocate of ten years' standing.

It is further considered desirable that the Bar Council of India should also have the power to constitute more than one disciplinary committee. Section 9 is being amended for the purpose.

Clause 6.—There is no provision in the Act relating to disqualification of members. The proposed section 10A specifies the circumstances under which an elected member of a Bar Council shall be deemed to have vacated his office.

Clause 7.—Section 15 deals with the power of a Bar Council to make rules. This clause seeks to amend this section to make it clear that the rules may lay down the conditions subject to which persons can exercise the right to vote.

Clause 8.—By virtue of sub-section (4) of section 16 of the Act, the advocates of the Supreme Court who were senior advocates on 1st December, 1961 automatically became senior advocates under the Act. The senior advocates are subject to certain restrictions in the matter of practice as may be prescribed by the Bar Council of India. It is proposed to give such advocates an option to relinquish their status as senior advocates and become ordinary advocates of the Supreme Court.

Clause 10.—Section 18 of the Act provides for the transfer of the name of an advocate from one State roll to another. When a person makes an application for such transfer, the Bar Council of India has no discretion in the matter and it has to issue necessary directions for such transfer. There may be cases where the transfer of the name of a person from one State roll to another is undesirable and the Bar Council of India should be empowered to reject an application for transfer in suitable cases, after giving the applicant a reasonable opportunity of representing his case. This clause seeks to amend the section for the purpose.

Clause 11.—Under section 20 of the Act, the Bar Council of India has to prepare and maintain a common roll of advocates in the order of seniority. The Bar Council of India has pointed out that preparation of the common roll after fixing *inter se* seniority of advocates all over India will be a laborious task and that the preparation of the common roll may therefore be delayed. This clause seeks to amend section 20 to enable the Bar Council of India to decide the manner in which the common roll shall be maintained.

Clause 12.—Section 22 deals with the issue of certificate of enrolment. In cases where the State Bar Councils have issued the certificates of enrolment, there may be no necessity for the Bar Council of India to issue a fresh certificate again. This clause seeks to amend the section to that effect.

Clause 13.—Section 24 of the Act prescribes the qualifications which a person is required to possess for enrolment as a new advocate. It has been brought to the notice of Government that certain classes of persons who were treated as advocates or who were entitled to be enrolled as advocates before the commencement of Chapter III of the Advocates Act would not strictly fall within the scope of section 24. It is also considered necessary to enlarge the scope of section 24 to cover certain other classes of persons as well who by reason of their training or experience should be eligible for enrolment whether they are law graduates or not. The proposed sub-sections (3) and (4) of section 24 specify the various classes of persons who should be eligible for enrolment as advocates. They are as follows:—

- (i) advocates on the roll of Judicial Commissioners' Courts,
- (ii) attorneys of High Courts,
- (iii) advocates of the Chief Court of Sind before 15th August, 1947,

(iv) advocates of Rangoon High Court before 1st April, 1937,
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(v) all persons who were entitled to be enrolled as advocates of a High Court (including a High Court of a former Part B State), or of a Judicial Commissioner's Court, and

(vi) all vakils, pleaders and mukhtars who have put in three years of practice before 31st March, 1964.

The Act was amended by the Act 32 of 1962 exempting law graduates who passed the final law examination before the 28th February, 1963, from undergoing training and passing the examination conducted by the Bar Council. Since the necessary arrangements for the implementation of the scheme of training could not be completed by all the State Bar Councils, it is proposed to extend the said period of exemption from 28th February, 1963 to 31st March, 1964 or to such other later date as may be prescribed. It is also proposed to enable the law graduates to pass the examination even during the course of training.

Other amendments are of a clarificatory nature.

Clause 14.—Section 10 of the Act provides for the constitution of an enrolment committee and section 26 deals with the functions of the enrolment committee. As a committee of the State Bar Council, the enrolment committee should carry out the functions subject to any rules that may be made or any directions that may be given by the Bar Council. It is proposed to make the position clear.

It is further proposed to have a specific provision to the effect that in all cases when a person gets himself enrolled as an advocate by misrepresentation or fraud or undue influence, the Bar Council of India may remove his name from the roll of advocates, after giving him an opportunity of being heard. Provision has also been made for sending due intimation to all other State Bar Councils in cases where there has been a refusal of the application for enrolment. This clause seeks to amend section 26 to achieve the purpose.

Clause 15.—It is thought necessary to have a provision enabling the Bar Councils to remove the name of any advocate who is dead or who seeks to have his name removed. New Clause 26A is intended to achieve the purpose.

Clause 18.—Section 37 of the Act provides for an appeal from an order of the disciplinary committee of a State Bar Council made under sub-section (3) of section 35. It is proposed to enlarge the scope of the provision so as to give the right of appeal even in cases where the disciplinary committee summarily rejects the complaint under sub-section (2) of section 35.

Clauses 19 and 20.—Under section 7(g) of the Act, the Bar Council of India has to exercise general supervision and control over the State Bar Councils. In order that these powers may be properly exercised, it is proposed that the Bar Council of India should be empowered to issue directions to the State Bar Councils and also to call for the record of any non-appealable case disposed of by a State Bar Council or a committee thereof and to issue appropriate orders thereon. The Bar Council of India should also have the power to make rules for enforcement of such directions and orders. Proposed new sections 48A and 48B are intended to achieve the purpose.

For the smooth working of the Act, it is proposed to vest wider rule-making power in the Bar Council of India in relation to the functioning of State Bar Councils and the enrolment of advocates.

Clause 21.—Under the Act, the power of the Central Government to make rules is very limited. This power can be exercised only when rules have not been made by a State Bar Council. It is proposed to empower the Central Government to make rules in respect of all matters which may be deemed necessary, including those matters in relation to which the Bar Councils have power to make rules, subject to the usual provision for laying the rules before Parliament. New section 49A is intended to achieve the purpose.

Clause 24.—As the Act provides for one class of legal practitioners only, namely, advocates, it is proposed to make it clear that under section 58(4), there should not be any fresh enrolment of pleaders or other class of legal practitioners. Certificates may, however, be issued to existing legal practitioners by way of renewal.

Clause 25.—The Chief Court of Oudh and the High Court of Allahabad were amalgamated by an order made in 1948 and a new High Court of Allahabad was constituted. The advocates of both the High Courts were recognised as advocates of the new High Court, but they were required to pay ten rupees each for enrolment as advocates in the new High Court. Many advocates did not pay this amount and they were not formally enrolled as advocates of the new High Court. A like situation has arisen in respect of certain advocates of the former State of Hyderabad as well. Similarly on the reorganisation of the Bombay State in May, 1960 a new High Court of Gujarat was constituted and many of the advocates of the Bombay High Court who opted for Gujarat could not get themselves enrolled within the prescribed time. It is necessary to make suitable provision to enable these persons to get enrolled as advocates. Proposed new section 58A is intended to achieve this purpose.

Chapter V of the Act deals with disciplinary jurisdiction of the Bar Councils and it has been brought into force from 1st September, 1963. Under the Chapter, a disciplinary committee of a State Bar Council can take action only against those advocates who are on the State roll. The State rolls are not complete and there are many advocates who have not yet been enrolled as advocates under the new Act. It is necessary to make suitable provision relating to disciplinary matters in respect of them. It is also necessary to make suitable provision for the disposal of disciplinary proceedings pending at the commencement of Chapter V. A Removal of Difficulties Order was issued at the time of enforcement of that Chapter. It is proposed to incorporate the provisions of that Order in the Act so that the validity of the Order may not be challenged in a court of law. Proposed new section 58B is intended to achieve the purpose.

It is also proposed to treat all advocates on the roll of the court of Judicial Commissioner in any Union territory immediately before 1st December, 1961 as advocates of High Court for the purpose of clause (a) of sub-section (1) of section 17.

The other amendments are of a formal or consequential nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill seeks to amend section 15 of the Act which deals with the rule-making power of the Bar Councils. It is proposed to make it clear that the rule may also lay down the conditions subject to which persons can exercise the right to vote. Clause 11 purports to amend section 20 of the Act leaving it to the Bar Council of India to decide the manner in which common roll shall be maintained. Clause 20 of the Bill seeks to amend section 49 so as to confer wider rule-making powers on the Bar Council of India for the smooth and efficient working of the Act. The matters in respect of which such rules may be made relate to the conditions subject to which an advocate may be entitled to vote at an election of the State Bar Council and the qualifications and disqualifications for membership of such Bar Council, the time within which and the manner in which effect may be given to the proviso to sub-section (2) of section 3 and the manner in which directions issued and orders made by the Bar Council of India may be enforced. The Bar Council of India has also been empowered to make rules in respect of other minor matters. Clause 21 of the Bill seeks to insert a new section 49A which empowers the Central Government to make rules for carrying out the purposes of the Act including rules with respect to any matter for which the Bar Council of India or a State Bar Council has power to make rules. The rules made by the Central Government shall be laid before both Houses of Parliament and shall be subject to the scrutiny of Parliament. The matters in respect of which rules may be made are of an administrative or procedural nature.

2. The delegation of legislative power is of a normal character.

M. N KAUL,
Secretary

